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Technology Center 2100

In re Application of: Melchione)
Application No. 09/585,811)
Attorney Docket No. NAI11P004/00.006.01) **DECISION DISMISSING PETITION TO**
Filed: May 31, 2000) **MAKE SPECIAL UNDER 37 C.F.R.**
For: SYSTEM, METHOD AND) **§1.102(d) AND MPEP § 708.02(XI)**
COMPUTER PROGRAM PRODUCT FOR)
PROCESS-BASED SELECTION OF VIRUS)
DETECTION ACTIONS)

This is a decision on the Request for Reconsideration of the petition to make special filed April 1, 2003 under 37 C.F.R. § 102(d) and MPEP § 708.02 (XI): Inventions for Countering Terrorism.

The petition is **DENIED**.

MPEP § 708.02(XI), which sets out the prerequisites for a grantable petition for Inventions for Countering Terrorism” under 37 C.F.R. § 1.102(d), states in relevant part:

International terrorism as defined in 18 U.S.C. 2331 includes “activities that - (A) involve violent acts or acts dangerous to human life that are a violation of the criminal laws of the United States or of any State, or that would be a criminal violation if committed within the jurisdiction of the United States or of any State; [and] (B) appear to be intended - (i) to intimidate or coerce a civilian population; (ii) to influence the policy of a government by intimidation or coercion; or (iii) to affect the conduct of a government by assassination or kidnapping...” The types of technology for countering terrorism could include, but are not limited to, systems for detecting/identifying explosives, aircraft sensors/security systems, and vehicular barricades/disabling systems.

Applicants who desire that an application relating to inventions for countering terrorism be made special should file a petition with the petition fee under 37 CFR 1.17(h) requesting the U.S. Patent and Trademark Office to make the application special. The petition for special status should be accompanied by a statement explaining how the invention contributes to countering terrorism.

Petitioners’ submission fails to meet the criteria set out with respect to countering terrorism in MPEP § 708.02(XI). The disclosed invention is generally directed to a system to scan data files in order to detect computer viruses.

There is no mention of terrorist activity in the disclosure. In response, petitioner has relied on 18 U.S.C. 2332b to define terrorism in a manner that relates to the disclosure. However, such reliance fails because there is no mention that any virus in the disclosure “intentionally causes damage without authorization, to a protected computer”, as explicitly required by 18 U.S.C. 2332b.

In fact, there is no mention anywhere in the disclosure that the viruses being scanned are harmful viruses, as understood in the art. Many viruses are relatively benign, and some are corrective and/or innoculative viruses. In fact, on page 8, line 18, of the specification (which is the only place in which attacks are mentioned at all), “virus” is listed as a separate entity from “attacks”, implying that the virus being scanned is not the same thing as an attack.

Furthermore, applicant has cited the following excerpt from pages 13 and 14 of the disclosure as evidence of countering terrorism:

“Thus, the foregoing technique is particularly beneficial since it allows the system administrator to ensure that users are prevented from downloading infected files from the Internet...”

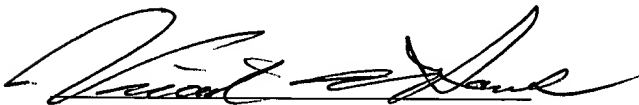
However, this statement is not, as petitioner argues, “an explicit suggestion” of countering terrorism. In fact, this statement would be equally applicable to preventing the transfer of files carrying viruses that contain advertisements or vulgar language.

As a result, no advancement in the technology of countering terrorism has been persuasively shown.

The petition is **DENIED**.

The application is being forwarded to Technology Center 2100’s Central Files to await examination in its proper turn based on its effective filing date. Telephone inquiries regarding this decision should be directed to the undersigned at (703) 305-9750.

It is suggested that applicants review MPEP § 708.02 regarding other grounds available for filing a petition to make special. In particular, note MPEP § 708.02(VIII): Accelerated Examination, which does not place limitations on the subject matter of the application.



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